

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANCISCO HERNANDEZ,

Defendants.

Case No. 23-CR-044-JFH-06

**UNITED STATES' RESPONSE TO FRANCISCO HERNANDEZ'S
MOTION FOR VARIANCE**

COMES NOW the plaintiff, the United States of America, by and through Christopher J. Wilson, United States Attorney, and Erin A. Cornell, Assistant United States Attorney, and responds to defendant Francisco Hernandez's Motion for Variance. For the reasons set forth below, the government does not object to the defendant's request for a downward variance.

I. Background

Between October 2021 and October 2022, members of the Lopez family and the defendant Francisco Hernandez (a Lopez family friend) purchased 107 firearms from four licensed firearms retailers in the Tahlequah and Muskogee areas. For each purchase, the defendants executed a Department of Justice ATF Form 4473, Firearms Transaction Record to the effect that they were the actual buyer of the firearm indicated on the Form 4473. In an indictment filed on March 8, 2023, the government alleged that as to each firearm transaction the defendants knew that they were not the actual buyer of the firearm. Defendant Francisco Hernandez was alleged to have personally purchased 35 firearms.

On September 11, 2023, the defendant pleaded guilty to Count Eight of the indictment, without a plea agreement. The government will dismiss Counts Nine, Thirteen, Fourteen,

Eighteen, Nineteen, Twenty, Twenty-One, Twenty-Two, and Twenty-Five at the time of sentencing.

The Presentence Investigation Report (PSR) calculates the defendant's advisory guidelines range as 18 to 24 months, based on a Total Offense Level of 15 and Criminal History Category I. This range is in Zone D of the Sentencing Table. The defendant asks the Court to vary downward and sentence him to probation.

For the reasons set forth below, the government agrees with the Probation Office's calculation of the defendant's advisory guidelines range. Nevertheless, the government does not object to the defendant's request for a downward variance.

II. Argument

The defendant is asking the Court to vary downward and sentence him to probation. The government does not object to the defendant's request for a downward variance, as such a request here is supported by the Section 3553(a) factors.

The defendant has no prior arrests or convictions. He has been steadily employed for his entire adult life. While the government in no way is trying to downplay the seriousness of the defendant's crime – unlawfully purchasing firearms – the defendant has been and will continue to be deterred from committing future crimes, as reflected by his lack of criminal history and, going forward, his felony status due to the instant conviction. Varying downward from the guidelines here will still provide a sentence that is sufficient but not greater than necessary to comply with the purposes set forth in Section 3553(a).

Furthermore, as demonstrated in the PSR, the defendants, including Francisco Hernandez, quickly cooperated with law enforcement by agreeing to interviews, which were integral to the overall investigation. Although defendants obtained one continuance of trial, this was due to the

size of the discovery production and was not because of the defendants' hesitancy to plead guilty.

III. Conclusion

For the reasons set forth herein, the government does not object to the defendant's request for a downward variance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2024, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Lance Phillips, Attorney for Defendant Francisco Hernandez

s/ Erin A. Cornell
ERIN A. CORNELL
Office of United States Attorney